BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MICHELLE R. WONSETLER	)	
Claimant	)	
VS.	)	
	)	Docket No. 247,773
KING LOUIE INTERNATIONAL, INC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent requested Appeals Board review of Administrative Law Judge Robert H. Foerschler's Preliminary Decision dated November 22, 1999.

ISSUES

Claimant alleges she injured her low back at work on August 11, 1999. Claimant testified she bent over to rethread a needle on the embroidery machine she was operating and something popped in her low back when she attempted to straighten up.

On appeal, respondent first contends claimant failed to prove she suffered an accidental injury that arose out of and in the course of her employment. Respondent argues no one witnessed claimant's alleged accident, therefore, claimant's unsupported testimony is not credible and fails to prove she suffered a work-related back injury. Second, the respondent argues claimant's low-back injury is not compensable because it is the result of normal activities of day-to-day living.[1]

The Administrative Law Judge found claimant proved she suffered a work-related low-back injury, ordered respondent to pay claimant temporary total disability benefits, and

[1] *See* 1999 Supp. 44-508(e).

took the payment of medical expenses under advisement. Claimant requests the Appeals Board to affirm the Administrative Law Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons set forth below, the Appeals Board finds the Administrative Law Judge's Preliminary Decision should be affirmed.

On August 11, 1999, claimant was operating an embroidery machine when she was required to rethread one of the needles. She bent over at the waist so she could see the hole in the needle for rethreading. When claimant attempted to stand up from the bent-over position, she felt a pop in her lower back. She immediately suffered severe low-back pain that radiated down into her legs. Claimant was unable to stand, and she had to clench the embroidery machine with both hands to avoid falling.

Claimant then cried out for help to her floor supervisor, Diana Cox. Ms. Cox and another employee, Dan Crabtree, came to her assistance. Mr. Crabtree pulled a chair over so claimant could lower herself to sit on the chair. By this time the general manager, Melvin McMurtry, had been notified of claimant's problems and had reached claimant's job location. When Mr. McMurtry saw claimant in excruciating pain, he immediately called for an ambulance for medical assistance and to take claimant to the local hospital's emergency room.

Claimant was initially seen in the emergency room by Dr. Snow. Following an examination, Dr. Snow decided claimant should be admitted into the hospital. After the admission, claimant's medical treatment was transferred to Paul K. Jacobson, M.D., a local family medicine physician. Dr. Jacobson placed claimant on pain medication and a CT scan was ordered. Claimant was released from the hospital the following day. The CT scan showed a disk bulge at L2-3, and at the L4-5 level, a moderate broad disk bulge was found with a suspicion for a herniated nucleus pulpus. Claimant was taken off work.

Dr. Jacobson referred claimant to orthopedic surgeon, F. Daniel Koch, M.D. Dr. Koch first saw claimant on August 18, 1999, and continued claimant off work. He placed claimant in a physical therapy program and continued claimant on pain medication. Dr. Koch also had claimant undergo an MRI examination and referred claimant to Mark B. Chaplick, D.O., for pain management. Dr. Chaplick provided claimant with two lumbar epidural steroid injections that failed to improve claimant's low-back condition.

Claimant was returned to Dr. Koch's care on September 17, 1999. On October 6, 1999, Dr. Koch saw claimant and reviewed her MRI examination. He found no obvious compressive lesions. But there was a small disk bulge at L4-5 which Dr. Koch opined certainly could be causing claimant pain. At this time, the doctor released claimant to light duty with temporary restrictions. The last time claimant saw Dr. Koch was on November 2, 1999, when he released claimant with light duty permanent work restrictions.

After the respondent received Dr. Koch's permanent restrictions, the general manager, Mel McMurtry, on November 10, 1999, sent claimant a termination notice indicating that the respondent could not accommodate her permanent restrictions. At the time of the November 18, 1999, preliminary hearing, claimant had secured other employment within her permanent restrictions.

Respondent argues claimant failed to prove she suffered an accidental injury that arose out of and in the course of her employment with the respondent. The phase, "in the course of" the employment, means the injury occurred while the worker was at work in the employer's service. The phase, "out of" the employment, requires some casual connection between the accidental injury and the employment. A worker's injury arises "out of" the employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[2]

The respondent argues claimant is simply not credible. Accordingly, respondent contends she failed to prove she suffered a work-related low-back injury. Respondent's general manager, Mel McMurtry, and Rose Johnson, a fellow employee, both testified that the day before claimant's injury they observed claimant having a hard time walking. But both also testified that claimant was able to work the full day. Claimant denied she had trouble walking the day before the accident. Claimant also denied she had any previous back problems before the accident. There is no testimony in the record that claimant was observed having any problems walking or any other problems on the day of this accident. Furthermore, there is no evidence in the record that claimant suffered an injury to her low back before August 11, 1999, and there is no evidence in the record that claimant had pre-existing low-back problems.

The Administrative Law Judge had the opportunity to observe all the witnesses who testified in this case. As noted, there was conflicting testimony between the claimant and respondent's representatives. The Appeals Board finds, where there is such conflicting testimony, some deference should be given to the Administrative Law Judge's findings and conclusions. Thus, the Appeals Board affirms the Administrative Law Judge's decision that claimant was a credible witness. Claimant established through her testimony that she injured her back while she was employed by the respondent.

Next, the respondent argues the mechanism of claimant bending over and then straightening up is simply a normal activity of day-to-day living, and her claim, therefore, is barred by statute. Respondent points to the statute that defines personal injury and qualifies that definition with the following provision:

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[2] *See* Newman v. Bennett, 212 Kan. 562, Syl. ¶ 3, 512 P.2d 497 (1973).

> An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.[3]

Respondent argues the act of bending over and straightening up is a normal activity of day-to-day living, and any injury resulting therefrom is not compensable.

The Appeals Board does not interpret the provision of K.S.A. 1999 Supp. 44-508(e) as respondent urges. Claimant's accident was a sudden traumatic event that occurred while she was performing a necessary job duty for the respondent. In this context, the act of bending over and straightening up, while rethreading a needle, is not an activity of day-to-day living. The reference to injury caused by activities of day-to-day living should be construed as a reference to the injury that occurs from the gradual wear of day-to-day activities no more at work than away from work.[4]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Robert H. Foerschler's Preliminary Decision dated November 22, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: James O. Yates, Kansas City, KS.
Theresa A. Otto, Kansas City, MO.
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

[3] *See* K.S.A. 1999 Supp. 44-508(e).

[4] *See* Boeckman v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).